

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**AMEREN TRANSMISSION COMPANY OF ILLINOIS,
APPELLANT**

vs.

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent**

**GENA BRIGGS, BILLY BRIGGS, DAVID SCHAEFER, BETH SCHAEFER,
MARGARET HOLLENBECK, CLIFFORD HOLLENBECK, AARON HOLLENBECK,
RICHARD GREGORY, JEANETTE GREGORY, WILLIAM DEFRIES AND KAMRA
DEFRIES, RESPONDENTS**

DOCKET NUMBER WD78141

DATE: AUGUST 11, 2015

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

Appellate Judges:

Before Division One: Cynthia L. Martin, P.J., Joseph M. Ellis, J., and James E. Welsh,
J.

Attorneys:

Michael R. Trip, for Appellant

Jennifer L. Heintz, for Respondent Public Service Commission

Paul G. Henry, for Respondents Briggs, Schaefer, Hollenbeck, Gregory and Defries

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, RESPONDENT
GENA BRIGGS, BILLY BRIGGS, DAVID SCHAEFER, BETH SCHAEFER,
MARGARET HOLLENBECK, CLIFFORD HOLLENBECK, AARON HOLLENBECK,
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WD78141

Cole County, Missouri

Before Division One Judges: Cynthia L. Martin, P.J., Joseph M. Ellis, J., and James E. Welsh, J.

Ameren Transmission Company of Illinois ("ATXI") intends to construct electrical transmission lines that will be located partially in Missouri that will be used by others to transmit electricity in interstate commerce. In 2012, ATXI filed a petition for declaratory judgment in the Circuit Court of Cole County against the Missouri Public Service Commission ("the PSC"), seeking a declaration that the PSC had no statutory authority to regulate ATXI's actions related to the construction of the transmission lines. ATXI further sought a declaration that it is not required to obtain certificates of convenience and necessity or other permission or approval from the PSC before beginning construction because the PSC has no siting authority over those projects.

The PSC filed a motion for summary judgment, asserting that, under the undisputed material facts, no justiciable controversy existed between the parties because the PSC had not yet taken any administrative action against or issued any order or decision related to ATXI. It argued that declaratory relief was, therefore, improper. ATXI filed a cross-motion for summary judgment arguing that, based upon the undisputed facts, it was entitled to judgment as a matter of law on the merits of the claims asserted in its petition. The trial court eventually granted the PSC's motion and granted summary judgment based upon the lack of a justiciable controversy. It denied ATXI's cross-motion.

AFFIRMED.

Division One holds:

- (1) In the context of a declaratory judgment action, a justiciable controversy exists where the plaintiff has a legally protectable interest at stake, a substantial controversy exists between parties with genuinely adverse

interests, and that controversy is ripe for judicial determination. The ripeness doctrine allows a court to apply a pragmatic test to determine whether the agency action is sufficiently binding and sufficiently clear in scope and implications to be susceptible to judicial evaluation.

- (2) The undisputed facts before the trial court reflected that the PSC had not taken any action against ATXI, nor had it threatened to do so. Likewise, the PSC had not issued any rule, regulation, or official statement generally setting forth a position on whether it had authority over companies solely engaged in the interstate transmission of electricity. Furthermore, ATXI's proposed projects were still in the planning phase, and ATXI had not yet acquired land or begun construction in this State. In bringing its action, ATXI was merely speculating that the PSC would, at some later date, if ATXI chose to proceed with the proposed construction projects, attempt to assert regulatory authority over ATXI.
- (3) Missouri courts do not issue opinions that have no practical effect and that are only advisory as to future, hypothetical situations. Because uncontroverted facts reflected that there was no presently existing controversy between the parties that was ripe for judicial determination, the trial court did not err in granting summary judgment in favor of the PSC.

Opinion by: Joseph M. Ellis, Judge

Date: August 11, 2015

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